

AMENDED IN SENATE JUNE 11, 2012

AMENDED IN SENATE APRIL 9, 2012

AMENDED IN SENATE JUNE 20, 2011

AMENDED IN ASSEMBLY MAY 9, 2011

AMENDED IN ASSEMBLY APRIL 26, 2011

AMENDED IN ASSEMBLY APRIL 14, 2011

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1217

Introduced by Assembly Member Fuentes

February 18, 2011

An act to amend *Section 7960 of, to amend* the heading of Part 7 (commencing with Section 7960) of Division 12 of, and to add Section 7962 to, the Family Code, relating to surrogacy *agreements*.

LEGISLATIVE COUNSEL'S DIGEST

AB 1217, as amended, Fuentes. Surrogacy agreements.

The Uniform Parentage Act defines the parent and child relationship as the legal relationship existing between a child and the child's parents, and governs proceedings to establish that relationship. Existing law provides that a party to an assisted reproduction agreement may bring an action under the Uniform Parentage Act at any time to establish a parent and child relationship consistent with the intent expressed in the agreement. Existing law also regulates the practice of surrogacy facilitators in assisted reproduction agreements, including surrogacy agreements.

The

This bill would require, in the case of when executing a surrogacy agreement, a surrogate mother and the intended parent or intended parents to be represented by separate independent counsel of their choosing. Before the surrogate mother could begin medication for assisted reproduction, this the bill would require the parties' counsel to review the surrogacy agreement and its ramifications with the surrogate mother and the intended parent or intended parents. Counsel would be required. The bill would require counsel for each party to the surrogacy agreement to issue legal clearance letters to the reproductive endocrinologist following that review a statement to the treating physician that the surrogacy agreement complies with Section 7962 of the Family Code. The bill would require the surrogacy agreement to be executed by the parties and notarized or otherwise witnessed, as specified. This The bill would require the surrogacy agreement to be lodged in the superior court in the county in which the child is to be born, and would require the agreement to be accompanied by declarations of its legitimacy. Further, this provide specific requirements for where the surrogacy agreement may be filed. The bill would provide that a surrogacy agreement that does not meet meets the above requirements would not be presumptively valid. The bill would require, upon request by a party to the surrogacy agreement, that the court seal all documents that list the identities of the parties. Because this bill would require the declarations accompanying the surrogacy agreement to be made under penalty of perjury, it the bill would expand the class of people persons who could be prosecuted for a crime, and thereby impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. The heading of Part 7 (commencing with Section
- 2 7960) of Division 12 of the Family Code is amended to read:
- 3
- 4 PART 7. SURROGACY FACILITATORS AND AGREEMENTS

1 *SEC. 2. Section 7960 of the Family Code is amended to read:*
2 7960. For purposes of this part, the following terms have the
3 following meanings:

4 (a) “Assisted reproduction agreement” has the same meaning
5 as defined in subdivision (b) of Section 7606.

6 (b) “Fund management agreement” means the agreement
7 between the intended parents and the surrogacy facilitator relating
8 to the fee or other valuable consideration for services rendered
9 or that will be rendered by the surrogacy facilitator.

10 (c) “Nonattorney surrogacy facilitator” means a surrogacy
11 practitioner who is not an attorney in good standing licensed to
12 practice law in this state.

13 ~~(a)~~
14 (d) “Surrogacy facilitator” means a person or organization that
15 engages in either of the following activities:

16 (1) Advertising for the purpose of soliciting parties to an assisted
17 reproduction agreement or acting as an intermediary between the
18 parties to an assisted reproduction agreement.

19 (2) Charging a fee or other valuable consideration for services
20 rendered relating to an assisted reproduction agreement.

21 ~~(b) “Nonattorney surrogacy facilitator” means a surrogacy~~
22 ~~practitioner who is not an attorney in good standing licensed to~~
23 ~~practice law in this state.~~

24 ~~(c) “Assisted reproduction agreement” has the same meaning~~
25 ~~as defined in subdivision (b) of Section 7606.~~

26 ~~(d) “Fund management agreement” means the agreement~~
27 ~~between the intended parents and the surrogacy facilitator relating~~
28 ~~to the fee or other valuable consideration for services rendered or~~
29 ~~that will be rendered by the surrogacy facilitator.~~

30 (e) “Surrogate” means a woman who bears and carries a child
31 for another through medically assisted reproduction and pursuant
32 to a written agreement, as set forth in Sections 7606 and 7962.

33 ~~SEC. 2.~~

34 *SEC. 3. Section 7962 is added to the Family Code, to read:*

35 7962. (a) For purposes of this part, “surrogate” means a woman
36 carrying and bearing a child for another.

37 ~~(b) A~~

38 7962. (a) Prior to executing the written surrogacy agreement,
39 a surrogate and the intended parent or intended parents shall be
40 represented by separate independent-counsel licensed attorneys

1 of their choosing. After reviewing the parties' surrogacy agreement
2 and its ramifications with their respective clients, ~~counsel~~ *each*
3 *attorney representing a party to the surrogacy agreement shall*
4 *issue a written legal clearance letters statement to the reproductive*
5 *endocrinologist treating physician in the assisted reproductive*
6 *undertaking that the agreement was executed in conformity with*
7 *this section. Providing this written statement shall not constitute*
8 *a waiver, under Section 912 of the Evidence Code, of the*
9 *lawyer-client privilege described in Article 3 (commencing with*
10 *Section 950) of Chapter 4 of Division 8 of the Evidence Code.*

11 ~~(e)~~

12 (b) The surrogacy agreement shall be executed by the parties
13 and the signatures on the *surrogacy* agreement shall be notarized
14 *or witnessed by an equivalent method of affirmation as required*
15 *in the jurisdiction where the surrogacy agreement is executed.*

16 ~~(d)~~

17 (c) A surrogate shall not be permitted to commence medication
18 ~~for assisted reproduction until the written legal clearance letters~~
19 ~~required under subdivision (b) are issued and the surrogacy~~
20 ~~agreement is executed and notarized~~ *undergo artificial*
21 *insemination, an embryo transfer procedure, or commence*
22 *injectable medication in preparation for an embryo transfer or*
23 *artificial insemination for assisted reproduction purposes until*
24 *the requirements of subdivisions (a) and (b) are met.*

25 ~~(e) At the time that the parties seek to establish~~

26 (d) ~~To request a parent-child relationship prior to the child's~~
27 ~~birth, the surrogacy agreement shall be lodged in the superior court~~
28 ~~in the county where the child will be born. The parties and their~~
29 ~~counsel shall attest to its legitimacy under penalty of perjury~~
30 ~~where the child is anticipated to be born, the county in which the~~
31 ~~intended parent or intended parents reside, the county where the~~
32 ~~surrogate resides, or the county where the surrogacy agreement~~
33 ~~is executed. The parties shall attest, under penalty of perjury, and~~
34 ~~to the best of their knowledge and belief, to the surrogacy~~
35 ~~agreement's compliance with this section. Submitting this~~
36 ~~declaration shall not constitute a waiver, under Section 912 of the~~
37 ~~Evidence Code, of the lawyer-client privilege described in Article~~
38 ~~3 (commencing with Section 950) of Chapter 4 of Division 8 of the~~
39 ~~Evidence Code.~~

40 ~~(f)~~

1 (e) (1) A surrogacy agreement ~~that is not executed in accordance~~
2 ~~with this section shall not be considered presumptively valid~~
3 *executed in accordance with this section shall rebut any*
4 *presumptions contained within Part 2 (commencing with Section*
5 *7540), subdivision (b) of Section 7610, and Sections 7611 and*
6 *7613, as to the surrogate, her spouse, or partner being a parent*
7 *of the child or children.*

8 (2) Upon petition of any party to a properly executed surrogacy
9 agreement, the court shall issue a judgment or order establishing
10 a parent-child relationship, whether pursuant to Section 7630 or
11 otherwise. The judgment or order may be issued before or after
12 the child's or childrens' birth subject to the limitations of Section
13 7633. Subject to proof of compliance with this section, the judgment
14 or order shall establish the parent-child relationship of the
15 intended parent or intended parents identified in the surrogacy
16 agreement and shall establish that the surrogate, her spouse, or
17 partner is not a parent of, and has no parental rights or duties
18 with respect to, the child or children. The judgment or order shall
19 terminate any parental rights of the surrogate and her spouse or
20 partner without further hearing or evidence, unless the court or a
21 party to the surrogacy agreement has a good faith, reasonable
22 belief that the surrogacy agreement or attorney declarations were
23 not executed in accordance with this section. Upon motion by a
24 party to the surrogacy agreement, the matter shall be scheduled
25 for hearing before a judgment or order is issued. Nothing in this
26 section shall be construed to prevent a court from finding and
27 declaring that the intended parent is or intended parents are the
28 parent or parents of the child where compliance with this section
29 has not been met; however, the court shall require sufficient proof
30 entitling the parties to the relief sought.

31 (f) Upon request by a party to a surrogacy agreement for a
32 petition to establish a parent-child relationship pursuant to this
33 section, the court shall order all pleadings and documents that list
34 the identities of the parties sealed. The request may be made
35 concurrently with the submission of a proposed judgment packet,
36 or upon ex parte application. Documents sealed pursuant to this
37 section shall only be unsealed upon petition to the court with good
38 cause shown.

1 (g) *A surrogacy agreement executed in accordance with this*
2 *section is presumptively valid and shall not be rescinded or revoked*
3 *without a court order.*

4 ~~SEC. 3.~~

5 SEC. 4. No reimbursement is required by this act pursuant to
6 Section 6 of Article XIII B of the California Constitution because
7 the only costs that may be incurred by a local agency or school
8 district will be incurred because this act creates a new crime or
9 infraction, eliminates a crime or infraction, or changes the penalty
10 for a crime or infraction, within the meaning of Section 17556 of
11 the Government Code, or changes the definition of a crime within
12 the meaning of Section 6 of Article XIII B of the California
13 Constitution.